



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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<http://www.blm.gov/ut/st/en.html>



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April 8, 2013

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DECISION

Red Rock Forests	:	Protest to the Inclusion of Certain
c/o Harold Shepherd,	:	Parcels in the December 19, 2008
Acting Executive Director	:	Competitive Oil and Gas Lease Sale
P.O. Box 344		
Moab, Utah 84532		

Protest Denied

On November 4, 2008, the Bureau of Land Management (BLM) issued its Notice of Competitive Lease Sale (NCLS) providing notice to the public that 214 parcels of land would be offered in a competitive oil and gas lease sale scheduled for December 19, 2008. The NCLS also indicated that the protest period for the lease sale would end on December 4, 2008. Based on the recommendations from the BLM Utah Field Office Managers, 131 parcels were ultimately offered at the lease sale on December 19, 2008.

In a letter received by the BLM on December 4, 2008, Red Rock Forests (RRF)¹ protested 70 parcels listed in the NCLS. By errata issued on December 2, 12, and 15, 2008, 17 of the protested parcels were deferred for additional review or deleted from the NCLS. By erratum dated December 2, 2008, portions of 2 of the protested parcels were deferred for additional review. By memorandum issued by the Secretary of the Interior on February 6, 2009, 77 parcels, including 36 of the protested parcels, were withdrawn from the lease sale. On September 21, 2011, refunds were issued and the corresponding bids for 2 parcels were rejected.

At the lease sale, competitive bids were not received on 4 of the protested parcels. A parcel that is not sold at a lease sale is available for noncompetitive leasing for a period of two years after the sale. The two-year period after the December 2008 lease sale passed without a noncompetitive lease of the 4 parcels.

Enclosure 1 identifies the protested parcels and shows which parcels were deferred, deleted, or withdrawn from the lease sale, not sold at the lease sale or in the two-year period after the sale,

¹ Red Rock Forests submitted its protest on behalf of itself, and George Wuerthner, Bradley Angel, GreenAction, Great Old Broads for Wilderness, and the Moab Local Green Party. In this decision, Red Rock Forests and these persons and organizations are collectively referred to as RRF.

or for which bids were rejected. The RRF protest as it pertains to these deferred (whole or in part), deleted, withdrawn, refunded or unsold parcels is dismissed as moot.

This decision addresses the RRF protest as it pertains to the remaining 11 protested parcels, which are located on public lands managed by BLM's Moab Field Office:

UTU86892 (UT1108-161)	UTU86958 (UT1108-213)	UTU87007 (UT1108-271)
UTU86900 (UT1108-165)	UTU86959 (UT1108-214)	UTU87026 (UT1108-296)
UTU86932 (UT1108-198)	UTU86986 (UT1108-243)	UTU87027 (UT1108-314)
UTU86933 (UT1108-199)	UTU86987 (UT1108-244)	

RRF generally alleges that in offering the subject parcels for lease, the BLM has violated, among other laws, the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act (ESA), the Clean Air Act (CAA), the Clean Water Act (CWA) and the Utah Water Code.

For the reasons set forth below, I have determined that BLM complied with applicable Federal laws and regulations prior to the inclusion of the subject parcels in the December 19, 2008 lease sale. Consequently, the RRF protest as it pertains to the 11 remaining protested parcels is denied.

Protest Contentions and BLM Responses

Protest Contention: BLM must complete site-specific analyses concerning the impacts of oil and gas development on the lease parcels before making them available for leasing.

BLM Response: Although RRF generally alleges that site-specific analyses concerning the impacts of oil and gas development must be completed on the lease parcels covered by its protest before making them available for leasing, RRF fails to provide any information regarding specific impacts to specific resources on or in the vicinity of the parcels about which it is concerned. In addition, RRF fails to provide any information on whether such impacts are foreseeable, the degree to which foreseeable impacts may or may not have been assessed in prior NEPA analyses, and the extent to which the stipulations attached to the parcels may prevent or minimize such impacts. Consequently, the protest is simply too general to establish any error on BLM's part in including the relevant parcels in the lease sale. Moreover, BLM is not required under NEPA or other applicable law to prepare site specific analyses prior to the inclusion of parcels in a lease sale if the potential impacts of such action(s) have been adequately assessed in previous analyses. The Moab Field Office Resource Management Plan (Moab RMP) was completed after several years of environmental analyses and approved on October 31, 2008 by the Assistant Secretary for Lands and Minerals, Department of the Interior. The NEPA analyses in the draft and final environmental impact statements (EISs) underlying the Moab RMP thoroughly considered, among other things, the potential direct, indirect, and cumulative impacts of oil and gas leasing in the planning area, and those analyses were incorporated in the leasing decisions set forth in the Moab RMP. In subsequently determining what parcels to include in the December 19, 2008 lease sale, BLM relied on the leasing decisions made in the Moab RMP. As summarized in the Moab Field Office's Documentation of Land Use Plan Conformance and Determination of NEPA Adequacy (DNA) documents, an interdisciplinary team of BLM resource specialists carefully assessed the adequacy of the NEPA analyses prepared in connection with the Moab RMP with respect to the relevant lease parcels. Based on this review, BLM's resource specialists concluded that the NEPA analyses underlying the Moab RMP were sufficient. Consequently, there was no need for BLM to complete site-specific analyses concerning the impacts of oil and gas development on the lease parcels before making them available for leasing.

BLM's procedures for managing oil and gas leasing and development activities are well established through land use planning, parcel nomination, competitive leasing, well permitting, development, operations, production, plugging and reclamation. It is not possible for BLM to determine the potential impacts of development on a lease parcel or parcels until BLM receives a complete application for an APD or other development scenario. At such time that BLM receives a complete application for an APD or other development scenario, BLM will complete a site-specific NEPA review based on the details contained within the application.

Protest Contention: BLM's pre-leasing NEPA analysis was inadequate because it failed to consider a no-leasing alternative.

BLM Response: NEPA Section 102 (E) requires that agencies "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternatives uses of available resources." The Council on Environmental Quality (Section 1502.14(d) of NEPA) requires the alternatives analysis in an EIS to "include the alternative of no action," but explains that there are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. "The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed." (CEQ Forty Most Asked Questions, Question 3). The NEPA analyses prepared during the development of the Moab RMP are consistent with these directives. With respect to NEPA Section 102(E), no issues or unresolved conflicts were identified during the development of the Moab RMP that required consideration of the complete elimination of oil and gas leasing within the planning area. Leasing, exploration and development of oil and gas resources are discussed in the Moab Field Office's Record of Decision (ROD) on its RMP on pages 25-27, 73-77, appendices A-C, Q and R and Map 12. A no-leasing alternative was considered but eliminated from further analysis in the Moab Proposed RMP and Final Environmental Impact Statement (EIS) (at Section 2.3.3).² Given the potential range of decisions for oil and gas leasing in the four alternatives studied in the Moab Draft RMP/EIS, public lands were placed into one of four categories: (1) open for leasing subject to standard lease terms and conditions; (2) open for leasing subject to moderate constraints such as timing constraints; (3) open to leasing subject to major constraints such as no surface occupancy (NSO); and, (4) unavailable for leasing. This range of alternatives was reasonable and fully complied with NEPA. See Southern Utah Wilderness Alliance, 177 IBLA 29 (2009).

Protest Contention: In its preparation of the Moab RMP, BLM failed to consider comments and information from the National Park Service and the State of Utah Public Lands Policy Coordination Office concerning deteriorating air quality in the vicinity of Arches National Park and Canyonlands National Park. Consequently, in that land use planning process BLM failed to take a hard look at potential air quality impacts involving ozone and National Ambient Air Quality Standards (NAAQS). For these and other deficiencies in the planning process, certain identified parcels should be withdrawn from the lease sale.

² The BLM Director's Protest Resolution Report prepared for the Moab RMP also discusses (at page 24) BLM's consideration of the No Leasing alternative. The Director's Protest Resolution Reports are located online at: http://www.blm.gov/wo/st/en/prog/planning/protest_resolution/protestreports.html (scroll to the respective RMP).

BLM Response: As mentioned above, the Moab RMP was completed after several years of environmental analyses and approved on October 31, 2008 by the Assistant Secretary for Lands and Minerals, Department of the Interior. Although RRF complains about BLM's consideration of certain air quality issues in the NEPA analyses prepared during the development of the Moab RMP, and contends that the alleged failure to adequately consider such issues will result in adverse impacts to air quality in the event certain parcels are leased, RRF fails to provide any information regarding the specific air quality impacts it believes will occur, whether such impacts are foreseeable, and the extent to which the stipulations attached to the parcels may prevent or minimize such impacts. Consequently, the protest is simply too general to establish any error on BLM's part in including the relevant parcels in the lease sale.

Further, RRF overlooks that it is not possible at the pre-leasing stage to accurately estimate through computer modeling or otherwise the potential air quality impacts of development, due to the variation in emission control technologies as well as construction, drilling, and production technologies applicable to oil versus gas production and utilized by various operators. Prior to authorizing specific proposed projects on the remaining parcels listed in RRF's air quality section of its protest for which leases were sold at the December 19, 2008 sale (Parcels 161, 198, 199, 214, 243 and 244), quantitative computer modeling using project specific emission factors and planned development parameters (including specific emission source locations) will be conducted to analyze air quality impacts. This dispersion modeling will include impact analysis for demonstrating the operator's compliance with the NAAQS, plus analysis of impacts to Air Quality Related Values (i.e. deposition, visibility), particularly as they might affect nearby Class 1 Areas (National Parks and Wilderness areas).

Protest Contention: BLM failed to comply with the NHPA by not consulting with Native American Tribes and interested public in identifying historic properties.

BLM Response: In compliance with the provisions of the State Protocol Agreement between BLM and the SHPO, the SHPO concurred with a no adverse effect on historic properties related to the oil and gas leasing decision contained in the Moab RMP (ROD, page 23). As outlined in the NHPA, SHPO 106 Consultation for the Moab Proposed RMP document (dated 7/2/2008), oil and gas leasing discussions are made on pages 10-12 and within its attachment 2. BLM specifically includes that the potential for adverse effects to historic properties as a result of oil and gas leasing activity is low and warrants a determination of no adverse effect. As per the Protocol Agreement section VII.A, SHPO notification beyond the quarterly submissions is not required with this determination. On November 26, 2012, the BLM submitted its cultural report to the SHPO and received concurrence on the determination of "No historic properties affected" from the SHPO on January 3, 2013.

On November 7, 2008, the Moab Field Office sent letters to the following Native American Tribes that BLM believed might be interested in or would be affected by the December 19, 2008 lease sale: Hopi Tribe, Navajo Nation, Paiute Tribe of Utah, Southern Ute Tribe, Ute Indian Tribe, Zuni Pueblo, Ute Mountain Tribe, and White Mesa Ute Tribe. In this letter, the Moab Field Office announced the proposed leasing of 71 parcels in Grand and San Juan Counties, Utah. The effects of leasing were analyzed in the 2008 RMP and the stipulations applied to each parcel are based upon management decisions found in the RMP. It was noted that the lease parcels may contain historic properties and/or resources protected under the NHPA, American Indian Religious Freedom Act (AIRFA), Native American Graves Protection and Repatriation Act (NAGPRA), Executive Order (E.O.) 13007, or other statutes and executive orders. The letter stated the act of leasing does not authorize ground disturbing activities and to drill a well, the lease holder would file an Application for Permission to Drill with a specific location and

operational details. Once a location is established, the BLM would conduct the necessary inventories and consultations, and would not approve any ground disturbing activities that may adversely affect any properties or resources that cannot be successfully avoided, minimized or mitigated. The letter stated a records review was completed on November 6, 2008, and the Moab Field Office determined a five-acre well pad and associated access road could be placed on each proposed lease parcel without adverse impacts to eligible cultural resources. The BLM also requested comments on any places of traditional or cultural importance that would be affected by leasing the identified parcels. All comments should be submitted to the Moab Field Office by December 11, 2008 either by phone or letter. The BLM also made follow-up telephone calls on November 4, November 5, and November 17, 2008, to the Hopi Tribe, Navajo Nation, Paiute Tribe of Utah, Southern Ute Tribe, Ute Indian Tribe, Zuni Pueblo, Ute Mountain Tribe, and White Mesa Ute Tribe. The Moab Field Office archaeologist spoke with the Hopi Tribe, the Navajo Nation and the Southern Ute Tribe. Voicemails were left at the Paiute Tribe of Utah, Ute Indian Tribe, Zuni Pueblo, Ute Mountain Tribe, and White Mesa Tribe. None of these Tribes responded to the voicemails. The BLM sent additional correspondence to the tribal historic preservation departments of the Hopi Tribe, Navajo Nation, Paiute Tribe of Utah, Southern Ute Tribe, Ute Indian Tribe, Zuni Pueblo, and Ute Mountain Tribe. The Hopi Tribe, the Navajo Nation, and the Paiute Tribe of Utah each responded with a formal letter.

The Hopi Cultural Preservation Office sent a letter dated November 24, 2008 that expressed concerns of the proximity of some proposed parcels to Arches National Park, which is a Hopi Traditional Cultural Property. The Office determined the proposed project has potential to adversely affect significant cultural resources which does not concur with the BLM's determination that the lease sale has no potential to cause adverse effects. The Hopi Cultural Preservation Office also recommends the Moab Field Office cancel or postpone this sale until such time as a balanced political environment allows for appropriate federal agency and public review and comment. The letter also states that if the proposed sale does proceed, the Hopi Cultural Preservation Office supports all requests by the National Park Service, the National Trust for Historic Preservation and Southern Utah Wilderness Alliance to withdraw specific parcels until further studies of the drilling's impact on cultural resources, wildlife, air, and water is fully and objectively considered. Lastly, the Office requested the withdrawal of all parcels within four miles of Arches National Park. As requested by the Hopi Tribe, BLM deferred from leasing any parcels, or portions thereof, within 4 miles of the Park boundary. The Hopi concurred with these deferrals and advised BLM that they had no other concerns regarding the parcels proposed for inclusion in the lease sale.

The Navajo Nation Historic Preservation Office-Traditional Culture Program (HPD-TCP) sent two letters dated February 4, 2008 and February 18, 2009. The February 4, 2008 letter stated the HPD-TCP concluded the proposed undertaking/project will not impact any Navajo traditional cultural properties or historical properties. However, the HPD-TCP requests that all operations within the project area cease if any inadvertent discoveries are made during the course of the undertaking. The February 18, 2009 letter stated the HPD-TCP located Cultural Sacred Sites within the proposed project area of the Manti-La Sal National Forest. The HPD-TCP recommends mitigation by consulting with the Navajo Nation chapters of Aneth, Red Meas and Oljeto, to avoid the area that threatens Traditional Cultural Properties. Also, the Navajo Nation requests notification in accordance with the Native American Graves Protection and Repatriation Act if any habitation sites, plant gathering areas, humans remains and objects of cultural patrimony are inadvertently discovered.

The Paiute Tribe of Utah Cultural Resources Office sent a letter dated November 12, 2008 which stated that they did not have any objections to the lease sale and are not aware of any archaeological resources in or near the proposed site.

The Southern Ute Tribe was contacted via phone on November 4, 2008. The Moab Field Office archaeologist was advised that it did not have concerns with this project and asked to be notified if human remains are discovered.

Not all of the Native American Tribes that were contacted by BLM sent responses back to BLM. For example, no responses were received from the Ute Indian Tribe, Zuni Pueblo, Ute Mountain Tribe and White Mesa Ute Tribe.

As demonstrated by the RRF protest, members of the public had the opportunity to raise concerns to the BLM regarding the parcels proposed for inclusion in the December 19, 2008 lease sale and the opportunity to protest such inclusion. Although RRF contends that the BLM failed to adequately consult with members of the public, RRF has not informed the BLM what degree of public participation it believes is required under the NHPA or the Protocol, or provided any persuasive legal authority for its assertion that BLM violated the NHPA by not adequately consulting with RRF and other members of the public. Moreover, RRF's protest does not demonstrate that the BLM's Section 106 consultation has overlooked a potentially eligible property. RRF's mere disagreement with the methodology employed by BLM in the NHPA process, by itself, cannot establish any error in that process.

Protest Contention: Because the potential impacts of leasing the parcels listed in the November 4, 2008 NCLS were not previously considered in a site-specific analysis, such analysis must be completed before the parcels can be included in a lease sale. Prior to the issuance of the NCLS, the public was unaware of the locations of the Moab Field Office parcels that BLM was considering including in the December 19, 2008 lease sale. The information provided in the NCLS concerning the locations of the listed parcels represents "changed circumstances upon which the public has not been able to comment or review site-specific NEPA analysis."

BLM Response: As set forth in the Moab Field Office DNA prepared in connection with the December 19, 2008 lease sale, oil and gas leasing and development was thoroughly analyzed in the draft and final EIS documents for the Moab RMP, and BLM's resource specialists determined that the NEPA analysis completed as part of the RMP process sufficiently assessed the environmental consequences of leasing the relevant parcels. A DNA is an appropriate means for the BLM to assess whether existing NEPA documents adequately analyze the anticipated impacts of an action so that the agency may proceed without performing further NEPA review. See Pennaco Energy v. U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10th Cir. 2004); Colorado Env'tl. Coal., 173 IBLA 362, 372 (2008); Ctr. for Native Ecosystems, 170 IBLA 331, 345-46 (2006); S. Utah Wilderness Alliance, 166 IBLA 270, 282-83 (2005).

RRF appears to contend that the BLM violated Section 202(f) of FLPMA, 43 U.S.C. § 1712(c), by failing to provide for adequate public comment prior to its protest submitted on the December 18, 2008 lease sale. However, Section 202(f) of FLPMA sets forth requirements concerning the land use planning process, which is something very different from the lease sale process. Consequently, RRF's reliance on Section 202(f) is misplaced.

RRF has cited to no legal authority, and there is none, for its contentions that because the potential impacts of leasing the parcels listed in the NCLS were not previously considered in a site-specific analysis, such analysis must be completed before the parcels can be included in a lease sale. BLM is not required under NEPA or other applicable law to prepare site specific analyses prior to the inclusion of parcels in a lease sale if the potential impacts of such action(s)

have been adequately assessed in previous analyses. The NEPA analyses in the draft and final EISs underlying the Moab RMP thoroughly considered, among other things, the potential direct, indirect, and cumulative impacts of oil and gas leasing in the planning area, and those analyses were incorporated in the leasing decisions set forth in the Moab RMP, and BLM relied on these leasing decisions in subsequently determining what parcels to include in the December 19, 2008 lease sale. As summarized in the Moab Field Office's DNA documents, an interdisciplinary team of BLM resource specialists carefully assessed the adequacy of the NEPA analyses prepared in connection with the Moab RMP with respect to the relevant lease parcels. Based on this review, BLM's resource specialists concluded that the NEPA analyses underlying the Moab RMP was sufficient.

RRF seems to be suggesting that the specific information in the NCLS concerning the locations of the parcels listed in the NCLS constituted the type of significant new information that requires a supplemental NEPA analysis. Under 40 C.F.R. § 1502.9(c)(1), a federal agency must supplement a final EIS analysis when "there are substantial changes in the proposed action or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." Information on the location of a lease parcel is obviously not that kind of information.

RRF Contention: BLM failed to properly map the lease parcels.

BLM Response: The Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), 30 U.S.C. § 226(f)), requires, among other things, that a notice of a proposed lease sale "include terms or modified lease terms and maps or a narrative description of the affected lands." See also 43 C.F.R. § 3120.4-1. BLM's Competitive Leasing Handbook (H-3120-1, page 11) states that "BLM will show for each parcel in the sale notice the state, parcel number (and/or serial number), county, legal description, percentage of U.S. mineral ownership if less than 100% and acreage." The BLM fully complied with these requirements by providing the public, in the NCLS, with legal descriptions of the lease parcels and maps showing their location, along with the stipulations and notices attached to each parcel. Further, all errata issued by BLM in December 2008 contained legal descriptions of any changes made by BLM concerning lease parcels. Additional maps (existing leases and sale parcels) were provided for illustrative purposes only and to complement the legal descriptions.

RRF contention: The BLM needs to conduct an assessment of the vulnerability of aquatic and terrestrial wildlife species and natural systems that will be adversely affected by global climate change. BLM should manage vulnerable systems and their tributaries to prevent them from experiencing regime shifts brought on by the impacts of climate change and remove other stressors from those systems by thoroughly analyzing cumulative impacts that leasing and development authorize.

BLM Response: RRF makes only conclusory allegations regarding the resources that it believes are at risk of cumulative impacts from oil and gas leasing and development, and does not identify which rivers, lake and terrestrial habitat or watersheds are of concern to it. In addition, RRF does not identify any particular cumulative impacts that the BLM failed to consider in its NEPA documents underlying the Moab RMP, or establish that such impacts would be significant. Consequently, RRF fails to show error in the cumulative impacts analyses in the NEPA documents underlying the Moab RMP. See San Juan Citizen's Alliance, 129 IBLA 1, 11 (1994).

Further, the BLM has assessed the potential impacts to the aquatic and terrestrial environments as a result of leasing. The BLM also coordinated extensively with and requested comments from U. S. Fish and Wildlife Service (USFWS) and Utah Division of Wildlife Resources (UDWR) concerning the December 19, 2008 lease sale. The USFWS and UDWR each provided comments on a parcel-specific basis and all recommendations were incorporated into the final parcel list. The review by the two agencies' (UDWR and BLM) field specialists considered the effects of oil and gas leasing activity on aquatic and terrestrial species and habitats. The USFWS and UDWR also affirmed that adequate protection was afforded to all relevant species or habitat.

RRF contention: The BLM is inconsistent in handling and executing oil and gas lease sales in Utah and the BLM has failed to prepare adequate RMPs.

BLM response: RRF's general contentions that BLM is inconsistent in its handling and executing of oil and gas lease sales in Utah, and that the Moab RMP is inadequate, state RRF's mere opinion but fail to meet its burden in challenging the inclusion of parcels in the December 19, 2008 lease sale.

RRF contention: The No Surface Occupancy (NSO) stipulation is not protective. Land that is located around land that is covered by a NSO stipulation is not protected from drilling infrastructure and access roads, and a NSO stipulation can be removed after the lease is issued.

BLM response: The application of NSO stipulations was analyzed in the Moab RMP and applied to areas that warranted that level of protection, whereas adjacent or surrounding lands were determined to have adequate protection without the need to apply NSO stipulations. Drilling infrastructure and access roads on lands not covered by a NSO stipulation are considered if and when they are proposed, along with proposed well locations. At the time site-specific development is proposed (subsequent to leasing), potential impacts and current resource conditions are analyzed. If a RMP provides waiver, exception or modification criteria, such criteria will be considered as part of this analysis. In its protest, RRF has not provided any specific instance where a NSO stipulation was inappropriately removed from a lease after issuance.

RRF contention: The Department of the Interior has violated the Endangered Species Act (ESA) by not including greater sage-grouse as an endangered species.

BLM response: Greater sage-grouse is not an endangered species at this time. In 2010, the species underwent a review by the USFWS and was determined to be a candidate species. Therefore, BLM will continue to manage it as a sensitive species and coordinate with the UDWR and USFWS in such activities. In preparing for the December 19, 2008 lease sale, BLM worked extensively with the UDWR and the USFWS. UDWR and the USFWS reviewed and commented on the parcels included on the NCLS, thus ensuring that appropriate stipulations and notices were attached to relevant parcels. In addition, BLM also attached to every parcel the Endangered Species Act Section 7 Consultation stipulation as required in Washington Office Instruction Memorandum 2002-174.

RRF contention: In offering Parcel UT1108-243, BLM is engaging in activities that may result in runoff that may add pollutants to Onion and Castle Creeks, which the State of Utah identifies as water quality limited bodies (303d List of Impaired Waters). BLM has failed to adopt a water protection plan as required by the Clean Water Act (CWA). BLM is violating NEPA and the Utah Water Code by not acknowledging diminishing water flows, drought and water shortages, over-allocated appropriated waters, pollution associated with fracking and produced water, or potential Tribal water claims.

BLM response: Parcel UT1108-243 is not located along Onion Creek or Castle Creek. The confluence of Onion Creek and Colorado River occurs approximately one mile to the east of the parcel. The parcel is, in fact, separated from Onion Creek by Professor Valley, the Colorado River, Highway 128 and Richardson Amphitheater. Similarly, the Castle Creek confluence is approximately 3 miles to the south and just off Mat Martin Point.

At the leasing stage, BLM works with the Utah Division of Environmental Quality (DEQ) to provide notice of protected Drinking Water Zones. The BLM also utilizes appropriate lease stipulations, including setback requirements from springs, riparian areas, floodplains, and waterways, and Controlled Surface Use for steep slopes. Therefore, at the leasing stage, the BLM has adequately considered water quality and quantity protections. RRF's concerns regarding water quality and quantity, and water rights are more properly directed to the exploration and development stage (should activities be proposed) rather than at the leasing stage. Oil and gas operating orders are considered and site-specific analyses of drilling proposals are completed at the time an Application for Permit to Drill (APD) is filed, and protection of water sources is considered at that time. As RRF points out, the State of Utah is responsible for the management and allocation of water rights. Should an actual APD be filed, the BLM would address water quantity and appropriated water rights within a NEPA context, and such analysis would include consideration of the impacts of fracking, impacts of produced water on water quality, the presence of Tribal water claims, etc. As a member of the public, RRF will have the opportunity to participate in that process.

Protest Contention: BLM did not complete an adequate pre-leasing NEPA analysis and, therefore, BLM has not adequately addressed the negative impacts of oil and gas activity on resources including identified species, wilderness, wilderness study areas, fragile soils, air quality, recreation, visual resources, floodplains, and light and sound pollution.

BLM Response: As previously discussed herein, BLM's pre-lease sale NEPA analyses were adequate and nothing in the RRF protest establishes otherwise. Beginning at page 21 of its protest, RRF lists certain parcels, identifies its concerns about specific resources on or in the vicinity of the parcels, and generally alleges that oil and gas development will negatively impact such resources. However, there is no discussion in the RRF protest showing that RRF considered whether any lease stipulation or notice that applies to a particular parcel, including the 11 remaining protest parcels, may or may not be sufficient to protect the resources of concern, or is otherwise relevant to its general allegations. For example, RRF's expressed concerns regarding Parcel UT1108-243 include river and water resources, desert bighorn lambing grounds, sagebrush steppe, bald eagle, burrowing owl, ferruginous hawk, Gunnison sage-grouse, VRM Class II designation, and wilderness characteristics. However, in its protest RRF fails to acknowledge and/or discuss the relevance to its protest of the following stipulations attached to Parcel UT1108-243:

- MBFO-NSO-1: Three Rivers and Westwater Mineral Withdrawals
- MBFO-NSO-24: Desert Bighorn Lambing Grounds
- MBFO-CSU-5: Sage Brush Steppe
- MBFO-CSUTL-2: Bald Eagle
- MBFO-CSUTL-6: Burrowing Owl and Ferruginous Hawk Nesting
- MBFO-CSUTL-8: Gunnison Sage Grouse Leks
- MBFO-CSU-3: VRM II Class Objectives
- MBFO-NSO-8: Fisher Towers, Mary Jane and Beaver Creek Areas – Wilderness Characteristics

The same response applies with respect to RRF's general allegations regarding the remaining 10 protested parcels (UT1108-161, UT1108-165, UT1108-198, UT1108-199, UT1108-213, UT1108-214, UT1108-244, UT1108-271, UT1108-273 and UT1108-314), to which are attached stipulations pertaining to the resources of concern to RRF.

Conclusion

RRF does not provide specific facts or information to show how its allegations apply to the 11 remaining protested parcels. It is well established that the BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. BLM is under no obligation to sort through a protestant's list of alleged errors and attempt to discern which alleged errors the protestant intended to invoke for a particular parcel. Such an unduly burdensome and inefficient process would unreasonably divert the time and resources that BLM otherwise needs to manage the public lands as mandated by Congress. For BLM to have a reasonable basis to consider future protests, RRF must identify the specific ground for protest and explain how it applies to each protested parcel. Any allegations of error based on fact must be supported by competent evidence. Further, RRF must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to its allegations, and explain how such stipulations or notices do not obviate the allegations. The failure to comply with any of the foregoing may result in the summary dismissal of the protest.

As the party challenging BLM's offering of the remaining 11 protested parcels for leasing, RRF bears the burden of establishing that BLM's action was premised on a clear error of law, an error of material fact, or a failure to consider a substantial environmental question of material significance. RRF has not met this burden. To the extent that RRF has raised any allegations not discussed above, they have been considered and found to be without merit or determined to be without relevance given the parcels that were deferred, deleted, withdrawn, rejected, or unsold.

For these reasons, and for those previously discussed, the RRF protest as it pertains to the following 11 parcels is hereby denied:

UTU86892 (UT1108-161)	UTU86958 (UT1108-213)	UTU87007 (UT1108-271)
UTU86900 (UT1108-165)	UTU86959 (UT1108-214)	UTU87026 (UT1108-296)
UTU86932 (UT1108-198)	UTU86986 (UT1108-243)	UTU87027 (UT1108-314)
UTU86933 (UT1108-199)	UTU86987 (UT1108-244)	

Appeal Provisions

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and instructions contained in Form 1842-1 (Enclosure 1). If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. Enclosed is a list of the parties (Enclosure 3) who purchased the subject parcels at the December 2008 lease sale and who therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

/s/ Jenna Whitlock

for Juan Palma
State Director

Enclosures

1. Background Information
2. Form 1842-1
3. List of Purchasers

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138

bcc: Lease Sale Book Dec08
Reading File UT-920
Central Files UT-950

UT922 pschuller:RRF 1208 3-13-13

Enclosure 1

Background Information

In a letter received by the BLM on December 4, 2008, the RRF protested 70 parcels included within the notice as follows:

UTU86887 (UT1108-159)	UTU86919 (UT1108-183)	UTU86954 (UT1108-209)
UTU86892 (UT1108-161)	UTU86920 (UT1108-184)	UTU86955 (UT1108-210)
UTU86893 (UT1108-162)	UTU86921 (UT1108-185)	UTU86956 (UT1108-211)
UTU86894 (UT1108-163)	UTU86922 (UT1108-186)	UTU86957 (UT1108-212)
UTU86899 (UT1108-164)	UTU86923 (UT1108-187)	UTU86958 (UT1108-213)
UTU86900 (UT1108-165)	UTU86924 (UT1108-189)	UTU86959 (UT1108-214)
UTU86901 (UT1108-166)	UTU86925 (UT1108-190)	UTU86960 (UT1108-215)
UTU86902 (UT1108-167)	UTU86926 (UT1108-191)	UTU86961 (UT1108-216)
UTU86903 (UT1108-168)	UTU86927 (UT1108-192)	UTU86962 (UT1108-217)
UTU86904 (UT1108-169)	UTU86928 (UT1108-193)	UTU86963 (UT1108-218)
UTU86905 (UT1108-170)	UTU86929 (UT1108-194)	UTU86964 (UT1108-219)
UTU86906 (UT1108-171)	UTU86930 (UT1108-196)	UTU86965 (UT1108-221)
UTU86907 (UT1108-172)	UTU86931 (UT1108-197)	UTU86966 (UT1108-222)
UTU86908 (UT1108-173)	UTU86932 (UT1108-198)	UTU86967 (UT1108-223)
UTU86909 (UT1108-174)	UTU86933 (UT1108-199)	UTU86968 (UT1108-224)
UTU86910 (UT1108-175)	UTU86934 (UT1108-200)	UTU86969 (UT1108-225)
UTU86911 (UT1108-176)	UTU86935 (UT1108-201)	UTU86985 (UT1108-242)
UTU86912 (UT1108-177)	UTU86936 (UT1108-202)	UTU86986 (UT1108-243)
UTU86913 (UT1108-177A)	UTU86937 (UT1108-203)	UTU86987 (UT1108-244)
UTU86914 (UT1108-178)	UTU86938 (UT1108-204)	UTU87007 (UT1108-271)
UTU86915 (UT1108-179)	UTU86939 (UT1108-205)	UTU87026 (UT1108-296)
UTU86916 (UT1108-180)	UTU86940 (UT1108-206)	UTU87027 (UT1108-314)
UTU86917 (UT1108-181)	UTU86941 (UT1108-207)	
UTU86918 (UT1108-182)	UTU86942 (UT1108-208)	

By errata issued on December 2, 12, and 15, 2008, the following 17 parcels were deferred for additional review or deleted:

UTU86924 (UT1108-189)	UTU86934 (UT1108-200)	UTU86965 (UT1108-221)
UTU86925 (UT1108-190)	UTU86960 (UT1108-215)	UTU86966 (UT1108-222)
UTU86926 (UT1108-191)	UTU86961 (UT1108-216)	UTU86967 (UT1108-223)
UTU86927 (UT1108-192)	UTU86962 (UT1108-217)	UTU86968 (UT1108-224)
UTU86928 (UT1108-193)	UTU86963 (UT1108-218)	UTU86969 (UT1108-225)
UTU86929 (UT1108-194)	UTU86964 (UT1108-219)	

By erratum dated December 2, 2008, portions of the following 2 parcels were deferred:

UTU86986 (UT1108-243)	UTU86987 (UT1108-244)
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By memorandum issued by the Secretary of the Interior on February 6, 2009, the following 36 parcels were withdrawn:

UTU86887 (UT1108-159)	UTU86902 (UT1108-167)	UTU86909 (UT1108-174)
UTU86893 (UT1108-162)	UTU86903 (UT1108-168)	UTU86910 (UT1108-175)
UTU86894 (UT1108-163)	UTU86904 (UT1108-169)	UTU86911 (UT1108-176)
UTU86899 (UT1108-164)	UTU86905 (UT1108-170)	UTU86912 (UT1108-177)
UTU86901 (UT1108-166)	UTU86906 (UT1108-171)	UTU86916 (UT1108-180)

UTU86917 (UT1108-181)	UTU86930 (UT1108-196)	UTU86941 (UT1108-207)
UTU86918 (UT1108-182)	UTU86931 (UT1108-197)	UTU86942 (UT1108-208)
UTU86919 (UT1108-183)	UTU86935 (UT1108-201)	UTU86954 (UT1108-209)
UTU86920 (UT1108-184)	UTU86936 (UT1108-202)	UTU86955 (UT1108-210)
UTU86921 (UT1108-185)	UTU86937 (UT1108-203)	UTU86956 (UT1108-211)
UTU86922 (UT1108-186)	UTU86939 (UT1108-205)	UTU86957 (UT1108-212)
UTU86923 (UT1108-187)	UTU86940 (UT1108-206)	UTU86985 (UT1108-242)

On September 21, 2011, a refund was issued for the following 2 parcels:

UTU86907 (UT1108-172)	UTU86908 (UT1108-173)
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Bids were not received on 4 parcels during the oral auction or afterwards on a non-competitive basis. An unsold parcel is available on a first come, first-served basis for a two year period beginning the day of the sale. The length of time allotted to offering a lease on a noncompetitive basis has passed.

UTU86913 (UT1108-177A)	UTU86915 (UT1108-179)
UTU86914 (UT1108-178)	UTU86938 (UT1108-204)

Enclosure 2
Form 1842-1

Enclosure 3
List of Purchasers

<u>Lease (Parcel Number)</u>	<u>Purchaser</u>
UTU86892 (UT1108-161) UTU86900 (UT1108-165)	Twilight Resources 1411 East 840 North Orem, UT 84097 And Fidelity Exploration & Production 1700 Lincoln #2800 Denver, CO 80203
UTU86932 (UT1108-198) UTU86933 (UT1108-199) UTU87026 (UT1108-296)	SonJa V McCormick 1481 S Preston St Salt Lake City, UT 84108
UTU86958 (UT1108-213) UTU86959 (UT1108-214) UTU86986 (UT1108-243)	Tidewater Oil & Gas Co, LLC 110 16 TH St., #405 Denver, CO 80202
UTU86987 (UT1108-244) UTU87007 (UT1108-271)	Anderson Oil LTD 5005 Woodway Dr., STE 300 Houston, TX 77056
UTU87027 (UT1108-314)	Kenneth K Farmer P.O. Box 2895 Casper, WY 82602